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BOOK REVIEWS.

EDWARD N. PERKINS, *Editor-in-Charge.*

CRIMINAL PSYCHOLOGY. By HANS GROSS, J. U. D., Professor of Criminal Law at the University of Graz, Austria; formerly Magistrate of the Criminal Court at Czernovitz, Austria. Translated from the German by HORACE M. KALLEN. With an introduction by JOSEPH JASTROW, and a bibliographical appendix. Boston: LITTLE, BROWN & Co. 1911. pp. xx, 514.

This is the second volume of the Modern Criminal Science Series, published under the auspices of the American Institute of Criminal Law and Criminology. This book does not deal with the psychology of persons committing or about to commit crimes, as the title might indicate, but with the mental processes of those who are involved in the judicial investigation of crime and the trial of the accused, viz: judge, jury, and witness. Professor Jastrow says in his introduction: "What Professor Gross presents in this volume is nothing less than an applied psychology of the judicial processes,—a critical survey of the procedure incident to the administration of justice." The scope of the book is further shown by the titles of the two parts into which it is divided: (I) The Subjective Conditions of Evidence (The Mental Activities of the Judge), (II) Objective Conditions of Criminal Investigation (The Mental Activity of the Examinee). These titles also indicate that the author is basing his discussion on the German criminal procedure, which is inquisitorial in character. According to this practice all witnesses in the preliminary investigation and at the jury trial are examined by a judge who is bound by no "rules of exclusion." Certain characteristics of the German practice may be noted from the following extracts.

"The greatest mistake, and unfortunately, the commonest, committed by the judge, is his failure to discuss with the prisoner his more or less necessary earlier life" (55).

"Nowadays, more than ever, it is for the judge to test all evidence psychologically * * * before he permits the material brought together in a few hours to pass into the jury's hands" (106).

"The criminalist has as presiding officer not only to provide the truth which convinces; it is his business as state official to convince the defendant of the correctness of the arguments adduced, the witness of his duty to tell the truth" (161).

"When it is necessary to determine whether the witness deposes correctly concerning the direction of sound, it is best to get the official physician to find out whether he hears with both ears, and equally well with both" (210).

In part I of the book the author treats of the "conditions of taking evidence" (title A). He first says that the examining judge must do more than simply ask questions and let the witness answer them as he chooses; the judge should determine the "funded thought" of the witness, *i. e.* the extent of his knowledge and experience, and then should educate him so that he will not only want to tell the truth, but that he will be able to do so. Following this is a section on the motives that influence persons in their actions, the conclusion being

that "egoism, laziness, and conceit are the only human notions on which we may unconditionally rely." Under the title of "phenomenology" the statement of Helmholtz that "every state of consciousness has its physical correlate" is used as the basis for a discussion of the outward expression of mental states and the significance thereof in criminal trials.

Title B under part I deals with the "making of inferences." Here are considered proof, causation, scepticism, the empirical method in the study of cases, analogy, probability, chance, persuasion and explanation, inference and judgment, mistaken inferences, and statistics of the moral situation. The reasoning is based on the statement of Meinong that "all inference with regard to facts appears to depend upon the relation of cause and effect," and the proposition of Hume that knowledge of the relation between cause and effect cannot be determined by *a priori* reasoning, but depends wholly upon experience. Accordingly it is contended that all inferences must be tested by determining the experience of the person making them.

The subject-matter of part II is the psychology of the examinee. The author first discusses the general conditions of sense perception, and then taking as his major premise the proposition that witnesses do not recite mere facts, but that judgement and inference enter into all their statements, he analyzes the effects of the imagination, the intellectual processes, the association of ideas, recollection and memory, the will and emotion, upon what has been perceived. He then distinguishes the physical and mental characteristics of different classes of persons, particularly women and children, and points out the influence of nature and nurture. "Isolated influences" such as habit, heredity, etc. and mistakes of the senses and of the understanding are then treated. Finally the effects of sleep, intoxication, and suggestion are noted.

The usual method of the author is to discuss general psychological facts and theories, regarding which he exhibits an extensive knowledge, and then to apply these, where possible, to the judicial examination of witnesses. For this latter process his experience as an examining magistrate has well fitted him. In considering the application of the author's conclusion to our criminal practice it is necessary to distinguish between proceedings before a committing magistrate and the jury trial. The magistrate has greater freedom to analyze by his questions the mental attitude of the witness, than does counsel who is examining the witness before the jury. Though many of the conclusions will not fit our practice, yet the discussion of the various psychological processes involved in the examination of witnesses will be found advantageous and very interesting to any one concerned in the trial of criminal cases, especially prosecuting attorneys, who both investigate and examine.

With the exception of a few paragraphs the book is very readable. The author has an informal style which the translator has reproduced in idiomatic English. There is one mechanical defect in the book. The typography of the titles of the different groups of subdivisions is not sufficiently varied to indicate the context. The reader is compelled to have frequent recourse to the table of contents in order to determine what relation the material of a particular section bears to the general subject. This is a fault not found in the German edition.

E. R. K.